IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 312of 2004

Virendra Dutt

Versus

State & another

Date of decision:- 26.07.05

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 26.07.05 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL MISC. APPLICATION NO. 312 OF 2004

Virendra Dutt S/o Sri Sunder Mani
R/o village Budkot Patti Chandrawadni Tehsil Dev Prayag district Tehri Garhwal ..... Applicant

VERSUS

1. State of Uttaranchal
2. Parmanand S/o Jeet Ram
R/o village Budkot Patti Chandrawadni Tehsil Dev Prayag district Tehri Garhwal .... Respondents.

Dated:- 26-7-2005

Hon'ble J.C.S. Rawat, J.

Heard the parties counsel and perused the record.

This is an application under section 482 Cr.P.C. for quashing the proceedings of S.T. No.9/2004 State Vs. Virendra Dutt pending in the court of Sessions Judge, Tehri.

The brief facts relating to this case are that the applicant had a plot adjacent to the plot of the injured and the injured disposed of that plot to Sri Kamal Das for Rs.8000/- The respondent no.2 Parmanand did not sell the plot to the applicant and as such the applicant was annoyed. On 27.3.2003 the injured was coming from polling station. When he reached near the disputed plot the applicant had struck on him causing injuries on his person. A report was lodged. Thereafter the investigation was conducted and after completing investigation, charge sheet was submitted. The learned trial court took the cognizance and framed charge against the accused. Feeling aggrieved by the said order, the present application has been filed before this Court.

It was contended by the learned counsel for the applicant that there are simple injuries on the person of the injured and there was no intention to commit the murder of the injured. There were no such injuries, which are dangerous to life. The learned counsel for the applicant further contended that the learned Sessions Judge has erred in holding that there was a prima facie case against the applicant under section 307 IPC. It was further contended that the applicant has himself stated that the witnesses came after the incident. There was delay in lodging the FIR. As such the prosecution is liable to be quashed. Learned AGA refuted the contentions and submitted that charge has already been framed and the learned trial court is seized with the matter and the trial court will evaluate the evidence and conclude the trial into conviction or acquit the accused in accordance with law. It was further submitted by the respondents that this court cannot embark upon the evidence which is to be evaluated by the trial court. It was further submitted that the charges have been framed and the proceedings cannot be quashed.

The High Court cannot at this stage evaluate the evidence and the learned trial court has to satisfy whether there is a prima facie case against the accused or not. (**See Radhey 'Shyam Versus Kunj Behari and others, 1989 Supp (2) Supreme Court Cases 572** that the High Court under section 482 Cr.P.C. at the stage of framing of charge is not justified in going into meticulous consideration of evidence and appreciate documents and statements filed. The Apex Court has held in the case of **Kollakhmeanbhai Chanabhai Vs. State of Gujrat, 2000 Supreme**

Court (Cri) 13 has also taken similar view. It has further been held in **State Vs. Ganga Devi, 2000 SCC (Cri) 1486** that if the charge has been framed the charge should not be quashed in exceptional cases and this case does not fall as rarest of rare cases. The Apex Court has also observed that the High Court should wait and should not quash the proceedings u/s 482 Cr.P.C.

In view of the above discussion, the application under Section 482 Cr.P.C. devoids of merit and is dismissed.

(J.C.S. RAWAT,J)

Dated:- 26-7-2005

MPS